Committee on Health, Education, Labor and Pensions
Hearing on: AStates Rights and Federal Remedies:
When are Employment Laws Constitutional?@

April 4, 2001

Statement of James M. Jeffords

Good Morning. I would like welcome all of our witnesses and guests to today=s hearing of the Senate Committee on Health, Education, Labor and Pensions. We are meeting today to examine a very important issue C the recent spate of Supreme Court decisions affecting Congress= ability to redress employment discrimination and other unfair treatment of state employees.

As I have often stated, there is simply no place for discrimination in our workplaces. And it is my fervent hope that the day will come when all American workers will be secure in their fundamental right to be protected against discrimination in their workplaces.

We have made great strides in this direction. The enactment of the Civil Rights Act over 30 years ago served to codify this Nation=s commitment to fundamental principles of equal opportunity and fairness in the workplace. We followed along this path with the subsequent enactment of a number of important laws protecting against discrimination and unfair treatment of employees; for example the Age Discrimination and Employment Act, the Americans with Disabilities Act and the Family and Medical Leave Act. We are here today because of a growing concern that as a result of recent Supreme Court decisions, we seem to be moving away from our goal rather toward it.

Today we will first hear from Professor Dan Kimel. In 1974, Congress amended the Age Discrimination and Employment Act of 1967 (AADEA@) to ensure that state employees, such as Dan Kimel had full protection against age discrimination. However, in January 2000 the Supreme Court ruled in *Kimel v. Florida Board of Regents*, that Professor Kimel and other affected state university faculty did not have the right to bring their ADEA claims against their employer. The Court held that the 14th Amendment did not allow Congress the power to abrogate state sovereign immunity for violations under the ADEA. The *Kimel* case followed on the heels of *Alden v. Maine*, a 1999 case in which the Supreme Court ruled that Congress did not have the authority to subject states to private suits under the Fair Labor Standards Act.

This past February the Court issued another sovereign immunity ruling that narrowed protections for state employees. The case, *Board of Trustees of the University of Alabama v. Garret*, involved complaints brought by 2 separate Alabama employees: Patricia Garrett who claimed she was transferred to a lesser position after undergoing breast cancer treatment, and Milton Ash who claimed his asthma was exacerbated because his employer failed to enforce its non-smoking policy. The Supreme Court held that state workers such as Patricia Garrett and Milton Ash do not have the ability to sue their employers under Title I of the Americans with Disabilities Act (ADA)

While I was not a member of Congress when it passed the ADEA, I certainly was involved during the development and the ultimate passage of the ADA. During the consideration of the ADA, we heard extensive evidence regarding discrimination experienced by people with disabilities, including state employees. Congress, in enacting the ADA, intended to prevent and remedy this conduct. Unfortunately, the *Garrett* Court found that we exceeded our Constitutional authority.

The Supreme Court=s recent decisions reflect a growing jurisprudence governing the interaction between the federal government and the states. These decisions have a direct impact on Congress= ability to enact legislation, particularly labor laws that apply to state employees. As a result of these decisions, state employees, who may be victims of discrimination based on age or disability, no longer have the remedies that are available to individuals who happen to work in the private sector, or for a local government or for the federal government. Indeed, unless a state chooses to waive its sovereign immunity or the Equal Employment Opportunity Commission decides to bring a suit, state workers may now find themselves with no federal remedy for their claims of discrimination. In effect, these decisions have transformed state employees into second class citizens.

I am deeply concerned by these decisions. Employees should not have to lose their rights simply because they happen to work for a state government. And a considerable portion of our workforce has been impacted. In Vermont, for example, the State is one of the largest employers.

It is my hope that this hearing will give us a better understanding of why the Court has ruled the way it has and what we can do to remedy these constitutional hurdles when we are enacting legislation in the future.